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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO. D5012/2024

In the matter between:

THE BODY CORPORATE CAMARQUE

APPLICANT

and

SULESH SINGH

FIRST RESPONDENT

TRISHANA SINGH

SECOND RESPONDENT

ORDER

Accordingly, I make the following order:

1. The application for summary judgment is dismissed.
 2. The defendant is granted leave to defend the action.
 3. Costs shall be determined by the trial court.
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JUDGMENT

Kuzwayo AJ

[1] The applicant ("the plaintiff" in the main action and will be referred to as such for ease of reference) issued summons against the respondents ("the defendants" in the main action and will be referred to as such for ease of reference) claiming payment of a sum of R215 242.55 in respect of levies, sanitation and water charges. It is alleged that this is the amount that was owed by the defendants from September 2020 up to the date of the issue of summons, which is 30 April 2024. This amount does not include levies and other charges which accrued thereafter.

[2] The defendants defended the action and filed their notice to defend, and later filed a plea on 30 July 2023. Of importance is that the defendants admitted liability for payment of water and sanitation levies and in paragraph of the plea they pleaded as follows:

"1.1 The Defendants raised disputes regarding the amounts levied since taking transfer of the unit. The Defendants disputed various amounts found in various levy statements as well as the water and sanitation charges for September, November and December 2020. The defendants thereafter stopped paying the amounts due to the Plaintiff. The matter was referred to the Community Schemes Ombud (CSOS) under reference number 4400/KZN/2021 by the Plaintiff for arrear levies and ancillary amounts owed to them by the Defendant. The Defendant raised a dispute on the amounts owed. The matter was dismissed due to a failure on the part of the plaintiff to provide CSOS with the necessary documents needed by CSOS to adjudicate the dispute and have the matter resolved. The Defendants do not deny being liable to the Plaintiff for monies being claimed by the plaintiff."¹

[3] The defendants also raised a defence of statutory non-compliance with s 25(2)(c) of the Sectional Title Scheme Management Act 8 of 2011 ("STMS Act").

¹ First and second defendants' plea para 1.1.

They averred that the plaintiff had failed to comply with the said provisions because they did not issue a final notice detailing the amount and charges owing and giving the defendants 14 days to settle the amount owing, prior to taking legal action.

[4] Pursuant to the defendant's plea, the plaintiff filed an application for summary judgment against the defendants and averred that there was no *bona fide* defence and that the appearance to defend and plea were filed solely for the purposes of frustrating the proceedings. The application was opposed by the defendants on the basis that their defence was a triable defence.

[5] The dispute between the parties stemmed from the water and sanitary levies where the defendants were of the view that the charges were escalating even when they had paid the full amounts due. The defendants pleaded that they had raised disputes with the plaintiff regarding the amounts that they were being charged since they took transfer of the property. They had previously disputed various amounts in their statements for levies, more specifically for the months of September, October, November and December 2020. When no positive results were forthcoming, they thereafter stopped paying for levies and have been refusing to pay since then. This prompted the respondent to institute action against the appellants in the high court.

[6] The defendants' heads of argument were filed eight days late. At the time of filing the heads, the defendants also filed an application for condonation for the late filing. The application was not opposed by the plaintiff and was therefore granted.

[7] The only issue for determination is whether the defendants indeed have a *bona fide* defence in the matter.

[8] Mr *Anderton*, for the plaintiff, submitted that, save for water and sanitation charges for September 2020, November 2020 and December 2020, the defendants have not disputed any of the levies that were charged for the following years. The defendants' unit (Unit 9[...]) was allocated meter number W[...], and the amounts that were levied by the plaintiff to the defendants for their water consumption and sanitary levies were based on the invoices that were issued by the eThekweni Municipality. The arrears had accumulated to R215 242.55 as at the date of the issue of

summons and the claimed amount is lawfully due, owing and payable by the defendants.

[9] The plaintiff argued that the defendants did not dispute liability for payment of the claimed amounts, but only contended that the said amounts were arbitrary. However, they failed to set out the specific amounts that they contend are payable. In November 2020, the defendants ceased paying their levies.

[10] It is the plaintiff's contention that the defendants did not deny the averments that were made by the plaintiff in paragraphs 21 to 24 of the founding affidavit but had instead noted them which amounted to admission. The plaintiff stated that the amounts for the disputed months (inclusive of VAT) as they appear from the tax invoices for the defendants' unit (Camarque (Unit 9[...])) for water consumption were as follows:

- (a) For September 2020 - R1 731.56 including VAT;
- (b) October 2020 - R3 069.59, including VAT;
- (c) November 2020 - R1 862.64 including VAT; and
- (d) December 2020 - R225.31 including VAT.

[11] The defendants were also billed the following amounts for sewage disposal charges:

- (a) September 2020 - R352.68, including VAT;
- (b) October 2020 - R634.81, including VAT;
- (c) November 2020 - R383.78, including VAT; and
- (d) December 2020 - R36.97, including VAT;

which amounts are as they appear on the statements of eThekweni Municipality.

[12] Mr *Anderton* submitted that the above quoted amounts are the only amounts that were disputed by the defendants. Accordingly, for the purposes of the summary judgment, the plaintiff was prepared to leave out the amount of R10 536.80 in respect of the disputed months of September 2020, October 2020, November 2020

and December 2020. Therefore, he asked that summary judgment be granted for the sum of R204 705.75 because no further disputes were raised by the defendants regarding their charges.

[13] Mr *Anderton* disputed the defendants' assertions regarding the annexure "A", "B" and "C" to the answering affidavit. These annexures are copies of statements for 20 October 2020, 21 July 2020 and 28 November 2020, respectively. In the answering affidavit, the defendants contended that in October 2020, they were charged R3 069.59 for water and R634.81 for sanitation and in support of the said contentions attached annexure "A".

[14] Mr *Anderton* also disputed the amounts that the defendant stipulated in the answering affidavit were the amounts that were charged in October 2020 and advised that the correct amounts for October were R1 731.56 for water and R352.68 for sanitation. Additionally, Mr *Anderton* refuted that there were duplications of charges in annexure "C" to the answering affidavit, as alleged by the defendants.

[15] The plaintiff disputed that its claim in respect of the four months was rejected by the Community Scheme Ombud Service ("CSOS") on the grounds that the plaintiff had failed to comply with s 25(2)(c) of the STSM Act and that the claim was unsupported by evidence. The plaintiff asserted that the claim was dismissed on the basis that it was premature, and the plaintiff had failed to exhaust internal remedies. Furthermore, the plaintiff disputed the defendants' assertion that a letter of demand had not been issued, and maintained that a final demand was sent to the defendants on 30 March 2021, although he did not have proof of the same. He submitted that the defendants do not have a *bona fide* defence.

[16] The defendants' counsel, Mr *Sukdeo*, maintained that the defendants have a triable defence. He conceded that the defendants are liable to pay the arrear levies for water and sanitation charges but are disputing the amount they were owing due to their queries which have not been answered by the plaintiff to date. He was adamant that the defendants were prepared to pay once they were provided with a detailed explanation in response to their queries regarding the amounts they were charged.

[17] Mr *Sukdeo* contended that in as much as the defendants had failed to plead their case regarding their dispute of levies for the post December 2020 period, they were persisting with their queries for the amounts that were still being levied on them. He argued that there have been historical discrepancies on the invoices whereby the amounts did not correlate, and the statement of account presented to the court did not cover the full period of the claim. Therefore, a comprehensive statement was not placed before court.

[18] Mr *Sukdeo* conceded that that a final demand was sent by the plaintiff and received by the defendants on 30 March 2021. However, he argued that the said demand was not for the full amount that is currently claimed by the plaintiff. As a result, there was no notice in terms of Regulation 25 of the Sectional Title Management Regulation of 2016. He submitted that when the defendants disputed their levy statements, such dispute fell within the ambit of s 39(1)(c). He persisted that there are various issues that needed to be addressed by the plaintiff and there is a genuine dispute which can be dealt with by the trial court or be referred to the CSOS.

Legal principles

[19] It is trite that the plaintiff can apply to court for summary judgment on each of such claims in the summons based on a liquid document; or for a liquidated amount in money.² A liquidated amount for purposes of summary judgment is an amount that is either agreed upon or capable of prompt ascertainment. In determining whether an amount is liquidated, the courts have traditionally referred to whether the quantum is calculable with precision, either through a simple calculation or by reference to agreed facts. A claim is regarded as liquid if it stems from a liquid document (such as a contract where the amount is specified), or if the amount can be ascertained through a simple calculation based on the terms of the agreement.³

² Uniform Rule 32(1)(a) and (b).

³ *Pareto (Pty) Ltd and Another v Theron and Another* [2024] ZAWCHC 249 para 29.

[20] For a defendant to successfully oppose a summary judgment application, he must disclose a *bona fide* defence. This is still provided for in the amended Rule 32. Where the defence is based upon facts, in the sense that material facts alleged by the plaintiff in his summons, or combined summons, are disputed or new facts are alleged constituting a defence, the court does not attempt to decide these issues. All that the court has to enquire into is: (a) whether the defendant has fully disclosed his and the facts on which it is founded and (b) whether such defence is bona fide and good in law.⁴

[21] The court must be satisfied that the plaintiff has established its claim clearly on the papers and the defendants have failed to set up a *bona fide* defence as required in terms of the rules of this court. There are accordingly two basic requirements that the plaintiff must meet, namely a clear claim and pleadings which are technically correct before the court. If either of these requirements is not met, the court is obliged to refuse summary judgment. In fact, before even considering whether the defendant has established a *bona fide* defence, it is necessary for the Court to be satisfied that the plaintiff's claim has been clearly established and its pleadings are technically in order.⁵

Analysis

Letter of demand

[22] The defendants pleaded and argued that the plaintiff had failed to serve them with a letter of demand. In his argument pertaining to the issue of the letter of demand, Mr Anderton referred me to the case of *Body Corporate of Central Park v Mosa*,⁶ where the court found that giving notice in terms of Management Rule 25(2) is not essential to establish a cause of action in a claim for arrear levies. Mr Sukdeo submitted that in *Lion Ridge Body Corporate*,⁷ the same court took a contrasting

⁴ *Maharaj v Barclays National Bank Ltd* 1976(1) SA 418 (A) at 426A-C.

⁵ *Gulf Steel (Pty) Ltd v Rack-Rite Bop (Pty) Ltd and Another* 1998 (1) SA 679 (O).

⁶ *Body Corporate of Central Park v Makhalemele Mosa* Case number A3064/2021 handed down on 24 November 2021, at para 35.

⁷ *Lion Ridge Body Corporate v Alexander; Lion Ridge Body Corporate v Morata; Lion Ridge Body Corporate v Mukona and Another* [2022] ZAGPJHC 713.

view and elevated compliance with the Regulations and/or body corporate rules to be essential prior to the institution of an action. I considered both cases.

[23] In *Body Corporate of Central Park v Mosa*,⁸ the court stated that the STSM Act makes no provision for such notice to be sent to a unit owner who has defaulted in paying the contributions contemplated in ss 3(2) and (3) thereof, before a body corporate can institute legal action to enforce such payment. Hence, a failure to send a defaulting owner a Management Rule 25(2) final notice would not negate a body corporate's right in terms of ss 3(2) and (3) of the STSM Act to claim arrear contributions levied.

[24] Management Rule 25 sets out the procedure to be followed by a body corporate that wishes to collect a debt owing by its members.⁹ Management Rule 25(2) requires a body corporate to give written notice not later than 14 days after the adoption of a body corporate's budget, of the contributions and charges due by each member, the due payment date, the rate of interest, if any, payable on arrear amounts, and the details of a dispute resolution process the member can engage if they wish to challenge the charges sought to be levied (Management Rule 25 (1)).

[25] Having considered Management Rule 25 and the case of *Lion Ridge*,¹⁰ the notice referred to in Management Rule 25(2) refers to the notice to be given by the body corporate after the adoption of a body corporate's budget, the details of charges due by each member and process to be followed to challenge such budget. In my view, it does not refer to the disputes regarding the charges imposed by eThekweni Municipality for water and sanitation as per the member's consumption and the dispute between the parties does not involve the usual levies imposed on members by the body corporate.

[26] If I am not correct in my analysis of the notice in terms of Management Rule 25(1), I share the view of the court in *Body Corporate of Kleber v Sehube and*

⁸ Ibid

⁹ Ibid.

¹⁰ Ibid.

*Another*¹¹ that the plaintiff's failure to give notice does not eliminate the issue in dispute, which is the payment of levies. The statute does not prescribe the giving of a notice to make the debt due. Therefore, Regulation 25 does not purport to impose a pre-condition in the form of such a notice.¹² An owner who had not received such a notice, whether deliberately not sent or inadvertently not sent, when faced with a demand to pay arrears, is not excused from the liability to pay.¹³ Insofar as an obligation to give a notice in Regulation 25(2) has been created, it is an aspect of an administrative procedure to facilitate good order, not an injunction that is relevant to framing the cause of action.¹⁴

[27] I do not intend to elaborate on the issue of the plaintiff's failure to issue a notice because it was raised as a special plea. In any event, the defendants conceded liability and the only issue in dispute is the issue of quantum, which cannot be reversed by the fact that the plaintiff had failed to provide notice. Therefore, this court only has a duty to consider if the plaintiff has established its claim clearly on the papers and whether the defendants have a *bona fide* defence in their failure and or refusal to pay the claimed amount.

The claimed amount

[28] For the sake of completeness, it is necessary to first articulate the background of the claim. Before instituting these proceedings, the plaintiff initially referred the dispute regarding the arrear levies arising from the same account to the CSOS. In that application the plaintiff claimed payment of a sum of R21 611.84 in respect of arrear levies, interest and admin charges. Although it has been stated that the only months that were disputed by the defendants at the time were September, October, November and December 2020, it is not clear which months were incorporated in the said claim and how that amount was determined. Considering the amount of the claim and the year in which the dispute was lodged with the CSOS which is 2022, it is clear that such amount did not include the whole of the year 2021. No argument was presented that after 31 December 2020, the defendants had resumed paying

¹¹ *Body Corporate of Kleber v Sehube and Another* [2021] ZAGPJHC 653.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

and if so, when did they cease paying again. None of this is explained in the founding papers.

[29] Of importance is the fact that plaintiff's application was dismissed by the CSOS adjudicator on the ground that the plaintiff had failed to submit the necessary information and or documentation that she had requested to assist in investigating the claim. It is crucial to highlight what is set out in paragraph 15.4 of the adjudication order, where the adjudicator stated as follows:

"The Applicant has failed to submit a response as requested and it therefore appears that this application is premature as there are various issues on the Respondent's invoices which must be addressed, before any order of arrear levies, interest and admin charges can be granted."

[30] This on its own says a lot about the claim before this court and the order sought by the plaintiffs. It raises concerns that instead of addressing the defendants' queries that were pointed out by the adjudicator and submitting the necessary documents and or the comprehensive statement of the defendants' account, the plaintiff decided to abandon its claim with the CSOS and laid it to rest for some time before resorting to approaching the high court for recourse. Furthermore, the plaintiff was already aware that it has a bridge to cross before any order for payment can be granted.

[31] The pertinent issue is whether the plaintiff has pleaded its case in its particulars of claim and attached the necessary documents in support of the amount claimed. At this point, it is crucial to mention that the plaintiff failed to attach a comprehensive statement incorporating the defendants' arrears and or provide a breakdown of the claimed amount. It has always been the defendants' case that they do not deny their liability to pay only needed their queries to be addressed in order to determine the amount owing, due and payable.

[32] It is common cause that the defendants did not raise dispute of the levies that were charged for the following years, after 31 December 2020. However, at all material times, the plaintiff had been fully aware of the defendants' queries regarding

their charge of levies, which led to the plaintiff referring the dispute to the CSOS. There is no reason provided as to when and why it would then have changed its stance and accepted the charged levies.

[33] Without seeking to enter into the arena of the CSOS or be seen to reviewing its decision, I am duty bound to decide on the application for summary judgment, which is the issue before this court. In the process, I also cannot overlook the decision of the adjudicator that "there are various issues which must be addressed before any order for payment of arrear levies, interest and admin charges can be granted" and grant summary judgment. The adjudicator's order made it clear that various issues needed to be interrogated regarding the charge of levies that were charged on the defendants account to address their concerns. This never happened, which means that the cause for the defendants' concern was never addressed. I pause to mention that the burning issue of the defendants' charges and their non-payment would have been scrutinised and resolved by the adjudicator who has been given wide inquisitorial powers by legislation, at that stage.¹⁵ However, this could not be achieved without the plaintiff's cooperation of providing the relevant documents requested by the adjudicator.

[34] Of most concern is the fact that when instituting the action, the plaintiff failed to place these documents before court by attaching them to the particulars of claim. Although the adjudicator only dealt with the four months that were disputed by the defendants, in my view, the amount claimed by the plaintiff include arrear amounts for September to December 2020, correctly so because the amount/period leading to the claimed amount is interlinked and inseparable. Even though the adjudicator had ruled on the claim for the abovementioned period, the defendants' debt for the said had been carried over and forms part of this application.

[35] Therefore, this court cannot overlook the adjudication order and the reasons that led to the plaintiff's claim being rejected by the adjudicator. With no update or evidence presented before this court that the issues that were raised by the defendants were ever addressed, granting an order for summary judgment despite

¹⁵ Ibid para 35.

the adjudication order against such award would be an injustice to the defendant and undermining the CSOS powers as conferred to it by legislation.

[36] To date, there is no proof that system that was utilised by the plaintiff for charging levies for water and sanitation was ever reviewed, or simplified to the defendants, post December 2020. It is concerning that when the plaintiff realised that its claim was no longer premature and was ripe for hearing, it sought to bypass the dispute resolution mechanism of the CSOS, most probably because it had previously rejected the initial claim. In my view, the plaintiff should have allowed CSOS, based on its wide inquisitorial powers,¹⁶ to scrutinise and finalise the investigation of the charges imposed on the defendant. The CSOS was established to deal with these kinds of disputes and the plaintiff's conduct which effectively seeks to undermine the powers of the CSOS is not favourable.¹⁷ However, with the claim having been filed in this court, it deserves to be scrutinised by the trial court.

[37] Concerning the months that were disputed by the defendants during the year 2020, both parties have been inconsistent. In some instances, it has been contended that the defendants disputed charges for September 2020, November 2020, and December 2020 (paragraph 17 of the founding affidavit); and in paragraph 4 of the heads of argument, the plaintiff stated that it attached the municipal accounts for the months of "October to December 2020 (which are months used by the defendants to query the amounts charged)...". However, when addressing the billings of the disputed months, it incorporated October 2020 (paragraph's 21 and 24 of the founding affidavit).

[38] In his argument, the defendants' counsel also submitted that there was duplication of charges. This was disputed by the plaintiff's counsel in his reply. I agree with the plaintiff's counsel that no duplication of charges appear in annexure "C" to the answering affidavit, as contended by the defendants' counsel. The same amounts that the defendants were charged, as appearing in annexure "C", are for different periods/months.

¹⁶ *Heathrow Property Holdings No 33 CC and Others v Manhattan Place Body Corporate and Others* [2021] ZAWCHC 109; [2021] 3 All SA 527 (WCC); 2022 (1) SA 211 (WCC) para 35 17 Ibid para 29.

¹⁷ Ibid para 29.

[39] In their answering affidavit, the defendants averred that in the statement of 1 October 2020 they were billed R3 069.59 for water and R634.81 for sanitation. As correctly pointed out by the plaintiff's counsel, the amounts that were set out by the defendants regarding the levies contained in the October 2020 statement were inaccurate. The defendants were indeed charged such amounts, but such information is not confirmed by annexure "A" as submitted by the defendants. This could have been an error because the correct annexure is annexure "C".

[40] The defendants further referred to the amount of R14 007.24 which was amount that was due for and settled in full in July 2020. They averred that in the statement of August 2020 an amount of R934.40 appeared as a balance brought forward. In that regard, the defendants attached annexure "B" as confirmation of the paid amount and the balance brought forward. Again, this was correctly disputed by the plaintiff's counsel because the amount of R14 007.24 was paid in July but the amount of R934.40 did not appear in the statement of August 2020, which would have been expected to contain an amount carried over in July. Such amount appeared in the statement of 20 October 2020 (annexure "A" to the answering affidavit), not August 2020 as alleged by the defendants.

[41] With the plaintiff having tabled the amounts (inclusive of VAT) that were billed on the defendants' statements for the four months of September 2020, October 2020, November 2020, and December 2020 in its founding affidavit, I deem it necessary to analyse the statement that was issued by eThekweni Municipality on the 4 October 2020 in respect of the defendants' unit. The said statement should reflect the consumption of September 2020. An amount of R1 505.70 for water and R306.68 for sewage (excluding VAT), were charged in this statement.

[42] The statement that was issued by the plaintiff on 20 October 2020, reflects that these charges were incurred on 1 September 2020, while the statement of eThekweni Municipality indicates 2020/09/18 as the date of consumption. Based on Mr *Anderton's* submission that the amounts charged on the defendants are what is charged by the Municipality, one would expect these amounts to appear in the defendants' statement with the same dates as reflected in the statement from

eThekweni Municipality. This does not substantiate what was portrayed by the plaintiff's counsel in his argument. Clearly, the plaintiff's statement in paragraph 25 of its affidavit that "the Respondents' levy account was accordingly debited with the amounts reflected above including VAT which was payable by the Applicant to eThekweni Municipality" is also inaccurate.

[43] I therefore cannot say that the defendants' confusion and or dissatisfaction is unfounded or unreasonable. Of importance in this regard is the provision of Regulation 25(6) which provides that 'on request in writing by a member, the body corporate must make available a full and detailed account of all amounts debited and credited to the member's account with the body corporate'. Even if the defendants did not utilise Regulation 25(6) in its queries, in my view, the request of the CSOS adjudicator was sufficient to persuade the plaintiff furnish the necessary documents so that they could be scrutinised. This would have assisted in determining the amount due and payable by the defendants. Even in its particulars of claim, the plaintiff failed to attach a comprehensive statement, in support of its claim, detailing the global figure that is claimed.

[44] Mr *Anderton* also argued that, in their answering affidavit the defendants had noted paragraphs 21 to 24 of the founding affidavit which, according to him, means that they were admitting the contents thereof. In my view, these paragraphs were correctly noted by the defendants because the paragraphs were only stating the amounts as they appeared in the defendant's statements that were issued for the quoted four months and how they were levied on their accounts. Without the defendants having interrogated the statements as I have done in the preceding paragraphs, they had no grounds to dispute the allegations contained in those paragraphs.

[45] Mr *Anderton* advised the court that the plaintiff is willing to forgo the levies for September, October, November and December 2020, and request summary judgment for the sum of R204 705.75 because the levies for the remaining period (post December 2020) were never disputed by the defendants. The defendants may not have literally expressed their dissatisfaction regarding the charges post December 2020 but their continuous refusal to pay was sufficient to indicate that

they were still disputing the charges, especially as they had already indicated their discontentment. From inception, the defendants have always admitted liability to pay and only disputed the amounts charged. The plaintiff is entitled to payment of levies. However, as correctly pointed out by the defendants' counsel the trial court might interrogate the issues and deal with the discrepancies that were alleged by the defendants or refer the matter back to the CSOS. I agree with the defendants' counsel in this regard.

[46] Having said that, it is common cause that the defendants are owing levies and have admitted liability. The only issue in dispute is the issue of quantum, which have not been fully pleaded in the founding papers. In *Lion Ridge*,¹⁸ the court dismissed the applications by *Lion Ridge*¹⁹ and stated that neither the debt *Lion Ridge*²⁰ was alleging, nor the right to disconnect or limit the respondents' water and electricity supplies to enforce payment of that debt, had been established in its founding papers.

Conclusion

[47] I share the court's reasoning regarding the plaintiff's papers concerning the claim that is sought. The statements that were issued by eThekweni Municipality, which the plaintiff relies on for the amount of debt allegedly owed by the defendants, were not attached to the particulars of claim. Although some of these statements were attached to the affidavit in support of the application for summary judgment. Furthermore, no detailed statement of the defendants' account was placed before court to assist this court in determining the amount that is claimed by the plaintiff. It also does not appear anywhere in the plaintiff's papers or its argument that the defendant's queries were, at any stage, investigated and addressed.

[48] Therefore, to grant the plaintiff an order for summary judgment would be to effectively deny the defendants the opportunity to present their case before court. That cannot be said to be justice. In the circumstances, I am convinced that with the

¹⁸ *Lion Ridge* fn 7 above.

¹⁹ *Ibid.*

²⁰ *Ibid.*

defendants having conceded liability, they have a bona fide defence on the issue of quantum and am of the view that the matter deserves to proceed to trial.

Order

[49] It is therefore ordered that:

1. The application for summary judgment is dismissed.
2. The defendant is granted leave to defend the action.
3. Costs shall be determined by the trial court.

NZ KUZWAYO AJ

APPEARANCES

For the applicant: Adv S. Anderton
Instructed by: CB and Associates incorporated

For the respondent: Mr R. Sukdeo
Instructed by: Sukdeo Attorneys

Date of hearing: 20 March 2025
Date of judgment: 29 April 2025